

Date: **June 13, 2022**

**AGREEMENT TO PURCHASE**

I/We the undersigned Buyer(s) ("Buyer") offer to purchase the real estate put up for bids via online auction conducted by Schrader Real Estate and Auction Company, Inc. ("Auction Company") on behalf of the Trustees of the Viola M. Macy Living Trust dtd 11/21/2005 ("Seller"), being approx. 1.84± acres of land in pt. SW4 Sec. 6-T32N-R9E (Thorncreek Twp.) in Whitley County, Indiana, together with the improvements and permanent fixtures presently existing on said land, located at 2149 W. 650 N., Columbia City, Indiana and identified for property tax purposes as Parcel ID 92-03-06-000-302.000-011 (the "Property"). This offer incorporates the terms and conditions set forth herein and the bidding procedures and auction announcements set forth in Addendum A (collectively, this "Agreement").

1. **PURCHASE PRICE.** The purchase price is \$ \_\_\_\_\_, to be paid via wired funds at closing, plus expenses charged to Buyer, less applied Earnest Money and any other credits due Buyer, as provided in this Agreement.
2. **EARNEST MONEY.** Buyer shall have delivered to Auction Company at least ten percent (10%) of the Bid Amount to be held in escrow as an earnest money deposit ("Earnest Money") and applied to the purchase price at closing.
3. **TAXES; ASSESSMENTS.** At closing, Seller shall pay any balance due for: (a) real estate taxes assessed against the Property for 2021 (due in 2022) and/or any prior year; and (b) special assessments, including drainage assessments (if any), that are assessed against the Property and last payable without a penalty on or before the closing date. General real estate taxes assessed against the Property for 2022 (due in 2023) shall be **prorated** on a calendar year basis to the date of closing. At closing, the 2022 taxes (due in 2023) shall be estimated based on 100% of the amount last billed for a calendar year and Seller's prorated share of the amount thus estimated shall be paid via credit against the sums due from Buyer at closing, with no further settlement or adjustment after closing. Buyer shall then pay all taxes and assessments due after closing.
4. **SURVEY.** A new survey shall be obtained if and only if obtained in accordance with the provisions of Addendum A.
5. **DEED; TITLE INSURANCE.** The Property shall be conveyed by Trustee's Deed (subject to the Permitted Exceptions), to be furnished at Seller's expense. Seller shall furnish a commitment, updated to a date after the Auction and prior to closing, for the issuance of a standard coverage ALTA owner's title insurance policy in the amount of the purchase price insuring marketable title to the Property in Buyer's name, subject to standard exceptions and subject to the Permitted Exceptions (the "Final Title Commitment"). At closing, Seller shall pay for the cost of issuing a standard coverage ALTA owner's title insurance policy in accordance with the Final Title Commitment.
6. **PERMITTED EXCEPTIONS.** Buyer agrees to accept title and title insurance subject to and notwithstanding any of the following (collectively, the "Permitted Exceptions"): (a) existing roads, utilities and drains; (b) any visible or apparent use; (c) any variation between a deeded boundary line and a fence line, field line or other visible or apparent occupancy or occupancy line; (d) any easement, condition, covenant, restriction or other matter of record (except Liens); (e) any outstanding right or severance as to minerals; (f) any recorded oil and gas lease, active or not; (g) a lien for property taxes or assessments not yet payable; (h) any matter disclosed in this Agreement; and/or (i) any matter (except Liens) referenced in the preliminary title insurance schedules described in Addendum A. For purposes of this Agreement, "Liens" refers to any mortgage, contract for purchase and/or other monetary lien against the Property other than a lien for property taxes or assessments not yet payable.
7. **CLOSING.** Closing shall be held **on or before July 13, 2022**, or as soon as possible after said date upon completion of the survey (if applicable), the Final Title Commitment and Seller's closing documents. The closing may be scheduled by mutual agreement. Otherwise, Buyer shall be obligated to close on a date specified in an email or other written notice from Seller or Seller's agent to Buyer or Buyer's agent which date must be: (a) at least 7 days after sending such notice, and (b) at least 7 days after completion of the survey (if applicable) and the Final Title Commitment, but (c) not sooner than July 13, 2022. The closing shall be held at and/or administered through the office of **Fidelity National Title, 108 W. Main St., Warsaw, IN (Tel: 574-268-0065)**, or otherwise as mutually agreed.
8. **RISK OF LOSS.** The Property shall be conveyed at closing in substantially its present condition, normal wear and tear excepted. Seller assumes the risk of loss and damage until closing. Seller's insurance may be canceled as of the closing date.
9. **POSSESSION.** Possession shall be delivered in accordance with Addendum A. Seller shall pay for all utilities until possession is delivered.
10. **INCLUDED / EXCLUDED ITEMS.** Notwithstanding any other provision, this purchase includes or excludes any item that is specifically included or excluded according to Addendum A or any residential disclosure form signed by Seller. Propane tanks are excluded unless otherwise provided.
11. **THE PROPERTY IS SOLD "AS IS, WHERE IS", WITHOUT ANY WARRANTY OF ANY KIND AS TO ITS CHARACTER OR CONDITION OR ITS SUITABILITY FOR ANY PARTICULAR USE OR PURPOSE.**
12. **REMEDIES.** In the event of nonpayment or ineffective payment of the Earnest Money and/or any other nonperformance, breach and/or default with respect to an obligation of Buyer under this Agreement ("Buyer Default"), Seller shall have the right to: (a) give notice terminating Buyer's right to acquire the Property (whereupon Seller shall have the absolute right to re-sell the Property free and clear of any right or claim of Buyer); and (b) recover 10% of the purchase price as liquidated damages. Buyer agrees that 10% of the purchase price is fairly proportionate to the amount of Seller's damages due to a Buyer Default, which damages would otherwise be uncertain and difficult to ascertain. If such liquidated damages are adjudicated as unenforceable, Seller shall recover actual damages plus attorney fees and expenses. If this sale fails to close due to Seller's default: (i) Buyer shall have the right to demand and receive a refund of the Earnest Money and, upon such demand and receipt, this Agreement shall terminate; or (ii) at any time prior to such termination, Buyer may elect instead to seek specific performance; *provided, however*, if the title or title insurance does not conform to (or if Seller is otherwise unable to convey the Property in conformance with) the requirements of this Agreement, either party may terminate this Agreement by written notice to the other and, in the event of such termination by either party, Buyer shall receive the Earnest Money as Buyer's sole and exclusive remedy; *provided, further*, prior to any such termination by Buyer, Buyer must give Seller sufficient written notice of the nonconformity to enable Seller to cure the nonconformity and Seller shall have the right to extend the closing date for up to 30 days after receiving such notice in order to cure such nonconformity. If this sale fails to close, the Earnest Money shall be retained in escrow pending disbursement instructions: (A) signed by both parties (or by one party authorizing disbursement to the other); or (B) in a final court order. In the event of a Buyer Default, Buyer agrees to sign and deliver a release of the Earnest Money for payment of the liquidated damages due Seller (or, if Buyer fails to do so, Seller shall have the right to recover, in addition to any other recovery, attorney's fees and other expenses thereafter incurred by Seller in seeking to enforce any right or remedy). In a lawsuit to enforce a right or remedy under this Agreement, the prevailing party shall recover attorneys' fees and expenses and **ANY RIGHT TO A TRIAL BY JURY IS WAIVED.**
13. **1031 EXCHANGE.** Each party shall reasonably cooperate if another party intends to structure the transfer or acquisition of the Property as part of an exchange under 26 U.S.C. § 1031 ("Exchange"). This Agreement may be assigned for purposes of an Exchange, but the assignor shall not be released from any obligation. A party is not required to assume or incur any additional obligation in connection with another party's Exchange.
14. **GENERAL PROVISIONS.** Auction Company and its affiliated agents represent only Seller, not Buyer. This Agreement shall bind and benefit the parties and their respective heirs, personal representatives and successors. This Agreement constitutes the entire agreement between Buyer and Seller regarding the Property. No party is relying upon any other statement or promise and no party shall be bound by any purported oral modification or waiver. Time is of the essence. All terms of this Agreement shall be read and construed together as a harmonious whole and, unless otherwise provided or required by the express terms of this Agreement, shall survive closing. This Agreement may be executed in multiple counterparts, all of which together shall constitute the same instrument. The electronic transmission of a signed counterpart via email, fax or a commonly-used electronic signature service such as DocuSign® shall have the same effect as the delivery of an original signature.
15. **ACCEPTANCE DEADLINE.** This offer shall be deemed automatically withdrawn and the Earnest Money shall be returned to Buyer if this offer is not accepted by Seller in writing before the end of the first business day after the close of bidding.

Printed Name(s) of Buyer(s): \_\_\_\_\_

Signature(s) of Buyer(s): \_\_\_\_\_

Address: \_\_\_\_\_

Tel.: \_\_\_\_\_ Email: \_\_\_\_\_

Deed to: \_\_\_\_\_ Lender/Contact: \_\_\_\_\_

ACCEPTED BY SELLER on June \_\_\_\_\_, 2022: \_\_\_\_\_  
**Sign:** \_\_\_\_\_  
 (Kevin D. Macy, signing as attorney-in-fact, pursuant to POAs dtd 11/26/2019, for Thomas O. Macy and Viola M. Macy, Co-Trustees of the Viola M. Macy Living Trust dtd 11/21/2005)

**EARNEST MONEY RECEIPT:** Auction Company acknowledges receipt of the Earnest Money in the amount of \$ \_\_\_\_\_.

By: \_\_\_\_\_ Print: \_\_\_\_\_ Date Received: \_\_\_\_\_

Buyer(s): \_\_\_\_\_

Seller: \_\_\_\_\_

## ADDENDUM A

### BIDDING PROCEDURES AND AUCTION TERMS

For online auction conducted by:  
Schrader Real Estate and Auction Company, Inc.

On behalf of: Trustees of the Viola M. Macy Living Trust dtd 11/21/2005 ("Seller")

**Online Bidding Ends: June 13, 2022 at 6:00 p.m. (EDT) \***

(\* unless extended as provided below)

#### **PART A - BIDDING PROCEDURES:**

1. Bidding is online only and is open to anyone who has:
  - Registered as a bidder and obtained an online bidding number for this auction through the online bidding platform (<https://bid.schraderauction.com>);
  - Agreed to the Online Bidding Terms, as posted to the auction website ([www.schraderauction.com/auctions/8191](http://www.schraderauction.com/auctions/8191)); and
  - Agreed to the particular Auction Terms that apply to this auction ("Auction Terms"), consisting of the provisions contained in the Agreement to Purchase and this Addendum A, as posted to the auction website.
2. Each bidder must deliver a bid deposit to the Auction Company prior to bidding. Bids submitted by any bidder will be limited to ten times (10x) the amount of the bid deposit.
3. The initial bidding period ends at 6:00 o'clock p.m. (EDT) on Monday, June 13, 2022, at which time all bidding will close *unless* the bidding is extended in accordance with paragraph 4 below.
4. If a bid is received during the *final minute* of the initial bidding period (or during the *final minute* of any extended bidding period): (a) bidding will remain open for an extended bidding period ending five minutes after the end of the last prior bidding period; and (b) this extension of bidding will continue until an extended bidding period ends with no bid having been made during the final minute thereof, at which time all bidding will close. The time of any bid and the end of any bidding period shall be determined solely by the online bidding platform.

#### **PART B - AUCTION TERMS:**

5. The Auction Terms consist of the provisions contained in the Agreement to Purchase and this Addendum A, both of which have been posted to the auction website. These terms are non-negotiable and they supersede and control over any oral statements and/or any other written terms stated in the auction brochure and/or the auction website or otherwise.

6. After the bidding closes, a purchase offer for the final high bid will be completed by the Auction Company and delivered to the high bidder ("Buyer") who shall then sign and return the purchase offer to the Auction Company. The purchase offer will be in the form of the Agreement to Purchase and this Addendum A (as posted to the auction website) and may be signed and/or delivered electronically.
7. The lead-based paint disclosure form has been posted to the auction website and shall be signed by the Buyer at the end of the auction.
8. The final high bid is subject to the Seller's acceptance or rejection. The final high bid may be accepted at any time before the end of the first business day after the close of bidding.
9. An earnest money deposit is due from each Buyer in the amount of at least 10% of the Buyer's high bid. As an update to the marketing materials, the Buyer's bid deposit (delivered prior to the auction) will be held by the Auction Company as the Earnest Money for purposes of the Agreement to Purchase.
10. The balance of the purchase price is due in cash at closing. Bids are not contingent on financing. Each bidder is responsible for having arranged any financing prior to bidding.
11. Delivery of title and possession will be effective upon completion of the closing, to be scheduled in accordance with Section 7 of the Agreement to Purchase. The targeted closing period is on or before July 13, 2022.
12. The closing agent's fee to administer the closing will be shared equally (50:50) between the Buyer and Seller. Buyer will pay all costs of any loan obtained by Buyer.
13. General real estate taxes will be prorated to the date of closing. Buyer will assume and pay special assessments, including drainage assessments, if any, that are last payable without a penalty after the date of closing.
14. Seller will furnish the deed and owner's title insurance at Seller's expense in accordance with the terms of Section 5 of the Agreement to Purchase.
15. Preliminary title insurance schedules dated April 18, 2022 have been prepared by Fidelity National Title Company and posted to the auction website.
16. Buyer agrees to accept the title and acquire the property subject to all "Permitted Exceptions" as defined in Section 6 of the Agreement to Purchase. The Property is to be conveyed and the title insurance is to be issued free and clear of any mortgage or other Liens.
17. It is expected that the property will be conveyed using existing legal descriptions, without obtaining a new survey. In any event, a new survey shall be obtained if and only if: (a) the official(s) responsible for recording the deed will not accept the conveyance for recording without a new survey; or (b) Seller elects to obtain a new survey for any other reason in Seller's sole discretion.

18. If a new survey is obtained, the survey shall be ordered by the Auction Company and shall be sufficient for the purpose of recording the conveyance, but the type of survey shall otherwise be determined solely by the Seller. The cost of any such survey shall be shared equally (50:50) by Seller and Buyer.
19. The advertised acres are approximate and have been estimated based on the acres shown in the property tax records. No warranty or authoritative representation is made as to the number of acres included. The purchase price shall not be subject to adjustment regardless of the number of acres shown in any survey or other record created before or after the auction.
20. Advertised square footages and dimensions are approximate and have been estimated based on property tax information. No warranty or authoritative representation is made as to the size or dimensions of any improvements.
21. Boundary lines and auction tract maps depicted in the auction marketing materials are approximations provided for identification and illustration purposes only. They are not provided as survey products and are not intended to depict or establish authoritative boundaries or locations.
22. If a dispute arises prior to closing as to the location of any boundary, the Auction Company may (but need not) terminate the purchase contract by giving written notice of termination to Buyer, but only with the Seller's consent. In the event of such termination, the earnest money shall be refunded to Buyer and the Property may be re-sold free and clear of any claim of Buyer. In lieu of consenting to such termination, Seller may elect instead to enforce the purchase contract according to its terms.
23. Buyer's obligation to purchase and acquire the Property at closing is not contingent upon any post-auction inspection, investigation or evaluation of the character, condition or suitability of the Property. Buyer is responsible for having completed all inspections, investigations and evaluations before bidding. Buyer acknowledges that Buyer has either completed all such inspections, investigations and evaluations or has knowingly and willingly elected to purchase the Property without having done so. In either case, Buyer assumes all risks and agrees to acquire the Property "AS IS".
24. Without limiting the foregoing provisions, Seller and Auction Company and their respective agents and representatives make no warranty or authoritative representation as to: (a) zoning matters; (b) whether or not the property qualifies for any particular use; (c) the availability or location of utilities; (d) the availability of any permit; or (e) the accuracy of any materials or information prepared or provided by any third party regarding the auction and/or the property.
25. Schrader Real Estate and Auction Company, Inc. and its agents and representatives are exclusively the agents of the Seller.